

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>RICHARD MARSHALL,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO. 2:06-cv-701-ID-CSC</b>
	)	
<b>CHRIS WEST, in his individual capacity,</b>	)	
<b>LASHUN HUTSON, in his individual</b>	)	
<b>capacity</b>	)	
	)	
<b>Defendants.</b>	)	

**DEFENDANTS CHRIS WEST AND LASHUN HUTSON’S MOTION TO DISMISS**

COME NOW Lowndes County, Alabama, Sheriff’s Deputies Chris West and Lashun Hutson, the Defendants in the above-referenced matter, and move this Honorable Court to dismiss the Plaintiff’s Complaint against them pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, as the Plaintiff’s Complaint, and its component parts, separately and severally fails to state a claim against them upon which relief may be granted. As reasons for so moving, the Defendants state as follows:

I. Deputies Chris West and Lashun Hutson are entitled to have the Plaintiff’s § 1983 claims against them dismissed.

A. The Plaintiff’s Complaint fails to meet the Eleventh Circuit’s heightened pleading requirement.

B. Deputies West and Hutson are entitled to qualified immunity from the Plaintiff’s §1983 claims set forth in Count I of the Plaintiff’s Complaint.

1. Deputies West and Hutson are entitled to qualified immunity from the Plaintiff's Fourth Amendment claims.

a. The Plaintiff has not sufficiently alleged a violation of his Fourth Amendment rights.

i. The Plaintiff has failed to sufficiently allege that Deputies West and Huston subjected him to an unreasonable search of his vehicle.

(1) The search was a search incident to a lawful arrest.

(2) The search was based on, at least, arguable probable cause.

(3) The search was lawful based on the Deputies' reasonable belief that the Plaintiff was "dangerous . . . and may gain immediate control of weapons."<sup>1</sup>

ii. The Plaintiff has failed to sufficiently allege that Deputies West and Hutson subjected him to excessive force.

(1) The vehicular force was reasonable.

(2) The "warning shot" was reasonable.

iii. The Plaintiff has failed to sufficiently allege that Deputies West and Hutson falsely arrested him.

iv. The Plaintiff has failed to sufficiently allege that Deputies West and Hutson maliciously prosecuted him.

b. Deputies West and Hutson's alleged actions did not violate clearly established law with regard to the Fourth Amendment.

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<sup>1</sup> Michigan v. Long, 463 U.S. 1032, 1049 (1983).

2. The Plaintiff has failed to allege any facts supporting a First Amendment claim.

3. The Plaintiff has failed to allege any facts supporting a Fourteenth Amendment.

II. Deputies Chris West and Lashun Hutson are entitled to absolute sovereign immunity on all the Plaintiff's state law claims set forth in Counts II and III of the Plaintiff's Complaint.

III. The Plaintiff's claims for equitable and declaratory relief are due to be dismissed.

A. Deputies West and Hutson in their individual capacities are not proper parties against whom such claims may be brought.

B. This Court lacks subject matter jurisdiction over the Plaintiff's claims for equitable and declaratory relief.

1. The Plaintiff lacks standing to bring his claims for equitable relief and declaratory relief.

a. The Plaintiff lacks standing to bring claims for equitable relief and declaratory relief under federal law.

b. The Plaintiff lacks standing to bring claims for equitable relief under state law.

2. The Plaintiff's claims for equitable and declaratory relief are moot.

a. The Plaintiff's claims for equitable and declaratory relief are moot under federal law.

b. The Plaintiff's claims for equitable relief are moot under state law.

WHEREFORE, PREMISES CONSIDERED, Defendants Chris West and Lashun Hutson request that this Honorable Court enter an order dismissing all claims against them in this action.

Respectfully submitted this the 5th day of September, 2006.

**s/Daryl L. Masters**  
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**CERTIFICATE OF SERVICE**

I hereby certify that on **September 5, 2005**, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: **Jay Lewis, Esq.**

**s/Daryl L. Masters**  
OF COUNSEL